

**REMARKS**

Claims 1-41 and 44 are pending in the present application and are subject to a restriction and election of species requirement. Reconsideration of this application in view of the following remarks is respectfully requested.

**Election/Restriction**

Applicants hereby elect Group I, Species 1A and Species 1A-2 for examination on the merits. Applicants submit that claims 1 and 3-8 are readable on the elected invention.

**Restriction Requirement**

The Examiner has set forth a Restriction Requirement with regard to claims 1-44. However, dependent claims 42 and 43 have been canceled by a previous amendment. In view of this, the grouping of the claims is set forth as follows:

- I. Claims 1-41 are drawn to a method for processing poultry, classified in class 452, subclass 58; and
- II. Claim 44 is drawn to a device for processing poultry, classified in class 452, subclass 58.

For the purposes of the Examiner's Restriction Requirement, applicants elect Group I, directed to claims 1-41 for action on the merits. However, the Examiner is respectfully requested to reconsider his Restriction Requirement in view of the remarks as set forth herein below.

As set forth in § 803 of the MPEP, the Examiner must examine an application on the merits if the examination of the entire application can be made without serious burden. Two (2) criteria are identified for proper requirement for restriction:

- I. The invention must be independent or distinct as claimed; and
- II. There must be a series burden on the Examiner if the restriction is not required.

With regard to distinction, the Examiner asserts that Groups I and II are related as process and apparatus for its practice. The Examiner is correct that distinction can be shown if either (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. In this case, the Examiner asserts that the process steps can be practiced by hand. Applicants submit that the Examiner is incorrect. In order for distinction to be shown, it is necessary to show that “the process as claimed can be practiced by another and materially different apparatus or by hand” (emphasis added). In the present situation, each of the method steps requires the structure recited in independent apparatus claim 44. For example, claim 1 recites “stunning the live poultry in a stunning device.” In view of this, contrary to the Examiner’s assertion, this step cannot be performed by hand. Therefore, the method of the present invention is not distinct from the apparatus of the present invention.

In addition, Applicants respectfully submit that a series burden has not been placed on the Examiner to consider all of the claims in a single application. As admitted by the Examiner, all of claims 71-106 are classified in class 452, subclass 58. Therefore, there is no burden due to different classification.

In view of the above remarks, it is respectfully requested that the Examiner reconsider the Restriction Requirement and examine all of claims 1-41 and 44 in the present application.

### **Election of Species**

The Examiner has also required an election in the present application between:

Species IA as claimed in claims 1-35 and 38-41; and

Species IB as claimed in claims 36 and 37.

For the purposes of this election of species requirement, applicants hereby elect species IA. In view of this, the Examiner should provide an Office Action directed to claims 1-35 and 38-41.

The Examiner has also required an election in the present application between:

Species IA-1 as claimed in claims 2 and 16-20;

Species IA-2 as claimed in claims 3-8;

Species IA-3 as claimed in claims 9-15;

Species IA-4 as claimed in claims 21 and 22;

Species IA-5 as claimed in claims 23-27;

Species IA-6 as claimed in claims 28;

Species IA-7 as claimed in claims 29-41.

For the purposes of this election of species requirement, applicants hereby elect species IA-2. In view of this, the Examiner should provide an Office Action directed to claims 1 and 3-8.

Applicants are in disagreement with the Examiner's election of species requirement. On page 4 of the Examiner's Office Action, the Examiner states "[t]he species are independent or distinct because the claims forming the species are considered to be a change in scope, as opposed to further limiting the independent claim 1." Applicants are unaware that this is the basis for an election of species requirement and request the Examiner to inform Applicants where such a standard is set forth.

It is believed that at least claims 2, 9, 21, 28 and 29 could be rewritten to depend from dependent claim 3. In view of this, these claims are not species of dependent claim 3. Claims 2, 9, 21, 28 and 29 are merely directed to different aspects of the present invention. The Examiner's position that all claims of varying scope must be dependent on each other is without merit.

The Examiner's position that there are no generic claims is also without merit. At least independent claim 1 is generic to the present invention. It is also believed that at least dependent claims 2, 9, 21, 28 and 29 are generic to the present invention. In view of this, the Examiner should consider all of dependent claims 2-35 and 38-41 in the present application.

To the extent the Examiner persists in the present Restriction/Election, applicants reserve the right to file a Divisional Application directed to the non-elected claims. In addition, since all of the claims that are dependent on independent claim 1 include all of the limitations of independent claim 1, once independent claim 1 is found to be allowable, it is requested that the Examiner consider all of dependent claims 2-35 and 38-41 in the present application.

Favorable action on the present application is earnestly solicited.

**CONCLUSION**

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Paul C. Lewis, Registration No. 43,368 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: May 8, 2006

Respectfully submitted,

By   
Paul C. Lewis

Registration No.: 43,368  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road  
Suite 100 East, P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicant